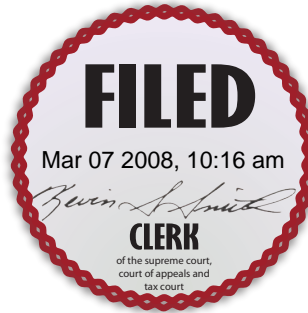


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SHAUN A. CRIGLEAR,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A05-0708-CR-446

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland Chamblee, Jr., Judge
Cause No. 71D08-0612-FB-00147

March 7, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Shaun A. Criglear (“Criglear”) was convicted in St. Joseph Superior Court of Class B felony burglary. Criglear appeals and claims that the evidence presented at trial was insufficient to support his conviction. We affirm.

Facts and Procedural History

The facts most favorable to the jury’s verdict reveal that on September 28, 2006, Rebecca Parker received a telephone call from her husband, who is the pastor of the Michiana Christian Community Church, informing her that someone had broken into the church. Rev. Parker asked his wife to go to the church to assist the police because he had to attend classes that night. Mrs. Parker met the police at the church and observed that someone had broken a window, broken open the door of the church office, and taken a desktop computer, a computer monitor, a printer, and a CD player. Mrs. Parker also observed that several items had been taken from the church sanctuary, including a laptop computer, two microphones, a DVD player, and PA monitors and speakers. In the church office, a computer modem had been moved from the desk, where it sat next to the computer, to a chair next to the window.

During the subsequent investigation, police recovered a fingerprint from the computer modem. South Bend Police Lieutenant Charles Eakins entered this fingerprint into a computerized fingerprint database, which returned several possible matches. Lt. Eakins then manually compared the results with the fingerprint obtained from the scene of the burglary. Using a methodology known as “ACEV” (which stands for Analyze, Compare, Evaluate, and Verify), Lt. Eakins determined that the fingerprint obtained from the scene of the burglary belonged to Criglear. Lt. Eakins then sent the fingerprint to Fort

Wayne Police Officer David Young, another fingerprint analyst, who verified that the fingerprint from the scene was from Criglear.

On December 1, 2006, the State charged Criglear with Class B felony burglary. A jury trial was held on June 26, 2007. At trial, Mrs. Parker testified that she had never seen Criglear at church, and that no one had given Criglear permission to take the things that had been stolen from the church. At the conclusion of the trial, the jury found Criglear guilty as charged. At a hearing held on July 20, 2007, the trial court sentenced Criglear to the advisory term of ten years, with eight years suspended and four years on probation. Criglear now appeals.

Discussion and Decision

Criglear admits that there was sufficient evidence to establish that someone had burglarized the church but argues that there was insufficient evidence to establish that he was the person who did so. Upon review of claims of insufficient evidence we neither reweigh the evidence nor assess the credibility of the witnesses. Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), trans. denied. Instead, considering only the evidence most favorable to the verdict and reasonable inferences drawn therefrom, we will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. Id.

Criglear claims that the State did not establish that the ACEV fingerprint-matching methodology met the requirements of Indiana Evidence Rule 702(b), regarding the admissibility of expert testimony. Criglear, however, made no objection at trial to the admissibility of the expert testimony and has therefore failed to preserve any error in this

regard upon appeal. See Lewis v. State, 755 N.E.2d 1116, 1122 (Ind. Ct. App. 2001). Perhaps recognizing this, Criglear couches his argument in terms of the sufficiency of the evidence, claiming that, without any evidence regarding the reliability of the fingerprint-matching methodology used by the police, the evidence adduced at trial cannot establish that he was indeed the individual who committed the burglary. We disagree.

In Burnett v. State, 815 N.E.2d 201, 208 (Ind. Ct. App. 2004), as here, the defendant's trial counsel had not objected to the admissibility of expert fingerprint testimony based upon Evidence Rule 702(b), thereby failing to preserve the issue upon appeal. Regardless, the court on appeal held that although the reliability of the ACEV methodology had not yet been established in Indiana state courts, federal courts in our state had determined that the methodology is reliable under Federal Rule of Evidence 702. Id. at 209 (citing United States v. Havvard, 117 F.Supp.2d 848, 855 (S.D. Ind. 2000), aff'd 260 F.3d 597 (7th Cir. 2001); United States v. George, 363 F.3d 666, 672-73 (7th Cir. 2004)). The Burnett court therefore held that, even if the issue had been properly preserved, the trial court could have taken judicial notice of the federal decisions. Id. at 209 (citing West v. State, 805 N.E.2d 909, 913 (Ind. Ct. App. 2004) (stating reliability may be established by judicial notice)).

The same is true here. Even if Criglear had properly objected, the trial court could have taken judicial notice of Burnett and the federal cases cited therein to establish the reliability of the ACEV method. We therefore reject Criglear's claim that the fingerprint evidence identifying him as the perpetrator of the burglary was unreliable. Furthermore, our supreme court has observed that "fingerprint evidence . . . has repeatedly been shown

to be undeniably accurate in the identification of individuals,” Cornett v. State, 450 N.E.2d 498, 500 (Ind. 1983), and that it is “universally recognized” that a fingerprint found in place where a crime was committed may be sufficient proof of identity. Shuemak v. State, 254 Ind. 117, 119, 258 N.E.2d 158, 159 (1970).

Given the fingerprint evidence and the testimony of Mrs. Parker that she had never seen Criglear in the church before, we conclude that the evidence is sufficient to support Criglear’s conviction for burglary.¹ See Johnson v. State, 512 N.E.2d 1109, 1110 (Ind. 1987) (evidence was sufficient to support burglary conviction where defendant’s fingerprints were found on window covered with a screen prior to the burglary and on door damaged during burglary); Shuemak, 254 Ind. at 119, 258 N.E.2d at 159 (fingerprint of defendant’s thumb found on a coin box which had been inside vending machine in burglarized premises was sufficient to support conviction for burglary).

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.

¹ Criglear briefly argues that Lt. Eakins’s results were not properly verified because Officer Young did not testify at trial. This is incorrect. Officer Young did testify at trial and confirmed that he verified Lt. Eakins’s results.